

Letter of Findings Number: 04-20120529P
Sales/Use Tax
For Tax Years 2009-11

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; [45 IAC 15-11-2](#)

Taxpayer protests the imposition of a ten percent penalty and interest.

STATEMENT OF FACTS

Taxpayer is an out-of-state business that provides services and sells equipment in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer, for the years 2009 through 2011. Based upon that audit, the Department issued a proposed assessment for sales tax, penalty, and interest. Taxpayer protests the imposition of penalty and interest. A hearing was held, and this Letter of Findings results. Further facts will be presented as required below.

I. Tax Administration—Penalty.

DISCUSSION

As noted, Taxpayer protests the imposition of penalty and interest. In its protest letter, Taxpayer states: Based on the fact that the proposed penalties on the tax due are for were [sic] taxes that we did not know we were required to file until the determination was made and that we were liable for the tax. [Taxpayer] has registered with the State of Indiana and going forward will file all taxes due in a timely manner. We are requesting that the State of Indiana reverse all penalties and interest as noted on the proposed assessments.

Regarding Taxpayer's protest of the interest, the Department is barred by statute from waiving interest under IC § 6-8.1-10-1(e).

Turning to Taxpayer's protest of the penalty, the Department notes that penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer clearly had nexus with the State of Indiana for sales tax purposes. The Audit Report states in part: [T]axpayer is a distributor of [] fire suppression products. Service calls are made in Indiana which range from servicing and re-charging fire extinguishers to inspection of [] haulers at a local steel mill.

Taxpayer at the time of the audit was not registered to conduct business in Indiana, believing it lacked nexus. Examination of taxpayer records revealed that total work in Indiana, which consists of sales of tangible personal property (to both taxable and exempt customers) as well as service work account for between

5[percent] and 7[percent] of taxpayer's annual volume. These transactions all took place in Indiana.

Taxpayer states that although it "did not know" that it was "required to file" Indiana taxes, Taxpayer does not cite to, nor develop an argument, regarding the case law on sales tax nexus. Under IC § 6-8.1-5-1(c) the Department's proposed assessments (in this instance, the penalties), are presumed to be correct. Taxpayer has not met its burden of proof; Taxpayer has not established reasonable cause.

FINDING

Taxpayer's protest of the penalty and interest is denied.

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